

BEFORE THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

REC'D TN
REGULATORY AUTH.
00 SEP 8 PM 3 53

IN RE: ALL TELEPHONE COMPANIES)
FILINGS REGARDING)
RECLASSIFICATION OF PAY)
TELEPHONE SERVICE AS REQUIRED)
BY FCC DOCKET 96-128)

OFFICE OF THE
EXECUTIVE SECRETARY
DOCKET NO. 97-00409

REPLY TO UNITED TELEPHONE-SOUTHEAST'S RESPONSE TO TENNESSEE
CONSUMERS' MOTION TO COMPEL AND TO MODIFY SCHEDULING ORDER

Comes Tennessee consumers to reply to United Telephone-Southeast's response to Tennessee consumers' Motion to Compel and to Modify Scheduling Order. In its response UTSE argues the familiar refrain that it should not be compelled to produce the discovery sought because it does not have it in the requested form. Tennessee consumers argue that United Telephone-Southeast has either not stated sufficient grounds to defend its failure to respond or alternatively, that even if it does not have the information in the sought after form the company still should be required to produce it.

It is noteworthy that UTSE did not request a protective order pursuant to Tennessee Rule of Civil Procedure (TRCP) 26.03, for the company does not qualify for such protection. TRCP 26.01 provides:

26.02 Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) IN GENERAL. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to

POSTED
9-8-00

lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in subdivision 26.01 shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or, (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision 26.03.

In this case none of the three criteria for limiting discovery exist, nor does United Telephone-Southeast allege that they exist. Moreover, the failure to order UTSE to supply the information sought would result in a manifest injustice because neither Tennessee consumers nor the Tennessee Regulatory Authority can obtain facts on the subjects sought by the discovery request by other means since those facts are uniquely in the possession of UTSE. See, e.g. TRCP 26.02 (4) (B) which provides an exception which requires production.

In addition, TRCP 26.02 provides in pertinent part:

(3) TRIAL PREPARATION: MATERIALS. Subject to the provisions of subdivision (4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

In this instance, Tennessee consumers and the Tennessee Regulatory Authority have a substantial need of the information sought in the preparation of the case and it is impossible or Tennessee consumers are unable without undue hardship to obtain the substantial equivalent of the materials by other means because crucial information is solely in the possession of UTSE. As

the Supreme Court noted in *Ballard v. Herzke*, 924 S.W. 2d 652 (Tenn. 1996) In determining whether good cause has been established for a protective order, it is important that trial courts balance one party's need for information against the injury that would allegedly result if disclosure is compelled. Id. at 658.

Furthermore, UTSE is aware of the Wisconsin Order which specifically negate its arguments and the TRA's decisions in related cases and it knew or should have known of agency requirements.

Wherefore Tennessee consumers pray that the Tennessee Regulatory Authority require UTSE to produce the information sought.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L. Vincent Williams', with a long horizontal flourish extending to the right.

L. Vincent Williams

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served on the parties listed below by mail on this the 8th day of September, 2000.

Richard Collier, Esq.
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

John Adams, Esq
Citizens Telecommunications
1400 16th St., NW, #500
Washington, DC 20036

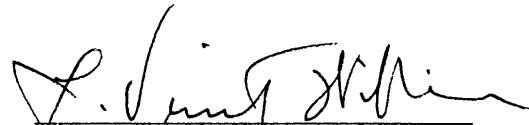
T.G. Pappas, Esq.
Bass, Berry & Sims
2700 First American Center
Nashville, TN 37219-8888

Jon Hastings, Esq.
Boult, Cummings, et al.
414 Union St., #1600
P.O. Box 198062
Nashville, TN 37219-8062

James Wright, Esq.
United Telephone-Southeast
14111 Capitol Blvd.
Wake Forest, NC 27587

Val Sanford, Esq.
Gullett, Sanford, Robinson & Martin
230 Fourth Ave., N., 3rd Floor.
Nashville, TN 37219-8888

Guy Hicks
Patrick Turner
BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300


L. Vincent Williams